

CALIFORNIA DEPARTMENT OF EDUCATION REQUEST FOR PROPOSAL

SPECIAL EDUCATION MEDIATIONS AND DUE PROCESS HEARINGS

December 2004

The California Department of Education (CDE) is soliciting proposals to conduct special education mediations and due process hearings required by federal and state laws. The bidder with the lowest responsible bid that meets the format requirements and standards specified in the request for proposal (RFP), as judged by the CDE, may receive a contract from **June 1, 2005, to June 30, 2008**. Every bidder is advised that failure of the Legislature or the Governor to approve the requisite funding annuls any continuing state obligation under the contract. Accordingly, the actual amount of the contract for each year will be limited to any amount approved by the Legislature and the Governor. Interested bidders also should be aware that mediations and hearings are conducted pursuant to the Individuals with Disabilities Education Act as well as all applicable state laws and regulations.

There will be no bidder's conference. Potential bidders who have questions about the content of this request for proposal should direct them to Allison Smith at the California Department of Education, Special Education Division. All questions must be submitted in writing and can be sent by e-mail or by regular mail. The e-mail address is asmith@cde.ca.gov. The mailing address appears below.

All questions must be received by **5 p.m. on January 14, 2005**. Responses will be posted by **5 p.m. on January 31, 2005**, on the CDE web site at <http://www.cde.ca.gov/fg/fo/r18/seho05rfa.asp>.

Due Date: Proposals must be received by 5 p.m. on February 15, 2005.

One signed original proposal and ten copies of both the Technical Proposal and the Cost Proposal must be received in the Administrative Services Unit, Special Education Division, by **5 p.m. on February 15, 2005**. The Technical and Cost Proposals are to be packaged separately. Bidders are advised to use express, certified, or registered mail. Transmittal by electronic mail or facsimile (fax) is not acceptable. Send or hand-deliver proposals to:

California Department of Education
Special Education Division
Administrative Services Unit
Attn: Allison Smith
1430 N Street, Suite 2401
Sacramento, CA 95814

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SPECIAL EDUCATION MEDIATIONS AND DUE PROCESS HEARINGS

I. PURPOSE

The California Department of Education (CDE), Special Education Division, is requesting proposals to conduct special education mediations and due process hearings in California public schools serving students with disabilities (age three to age twenty-two). The successful bidder will receive a contract to provide mediations and hearings pursuant to the Individuals with Disabilities Education Act (IDEA), California laws, and applicable regulations.

It is anticipated that the contract will begin **June 1, 2005, and end June 30, 2008**. Activities during **June 2005** will be for preparation and planning purposes; actual mediations and hearings will begin **July 1, 2005**.

II. BACKGROUND

As required by federal and state laws, all children with disabilities are entitled to a free appropriate public education under the Individuals with Disabilities Education Act (IDEA) (20 United States Code [U.S.C.] section 1400 et seq., 1975) and Part 30 of the California Education Code, commencing with Education Code (EC) section 56000. California receives federal grant assistance under the IDEA to administer the federal laws. Regional plans for local education agencies (LEAs) ensure that all eligible pupils receive substantive and procedural entitlements enumerated in statute and regulations. Eligible pupils and their parents or guardians are entitled to procedural safeguards with respect to disagreements concerning decisions about assessment, eligibility, program development, placement, and a free appropriate public education.

A request for due process, including either mediation or an administrative hearing, may be made under 20 U.S.C. section 1415 et seq. and EC section 56500.1 et seq. Mediation is a form of negotiation facilitated by a trained mediator. A due process hearing is provided by a hearing officer who has the requisite qualifications and skills (see page 4).

Mediation is a voluntary alternative dispute resolution process that is encouraged by state law under EC sections 56500.3 and 56503 and conducted prior to a hearing. IDEA, Part B, section 1415 (e), requires states to ensure that procedures are established and implemented to allow parties to resolve disputes through mediation.

Since 1989 mediations and due process hearings have been conducted through contract with the University of the Pacific, McGeorge School of Law, Institute for Administrative Justice, Special Education Hearing Office (SEHO) (the current contractor).

Through the current contract, parties can request either mediation or a due process

hearing. Upon receipt of a request for a due process hearing, the mediation process is encouraged through written and telephone correspondence with the assigned mediator and the parties to the dispute. Upon agreement by both parties, the due process hearing may be delayed to allow mediation to occur. Either party may opt at any time to continue with the hearing timeline.

The current contractor handles all aspects of mediation and due process hearings, including receipt, filing, handling all questions and motions, scheduling, keeping records, and reporting. The current contractor also responds to legal questions pertaining to all aspects of the mediation process and provides for periodic training for both mediators and hearing officers.

The vast majority of requests filed with the current contractor are for due process hearings; very few requests occur for mediation only. Of the requests for due process hearings, most parties agree to mediation, and most disputes are settled through mediation. Table 1 displays the workload for the past 13 years.

Table 1 – Special Education Hearing Office Workload for the Past 13 Years

Fiscal Year	Hearing Requests	Actual Hearing Decisions	Special Education Statewide Enrollment April 1 (includes infants)	Hearing Decisions per 10,000 students	Hearing Requests per 10,000 students
1990-1991	611	64	497,071	1.29	12.29
1991-1992	772	60	521,615	1.15	14.80
1992-1993	889*	49	540,472	0.91	16.45
1993-1994	1,085*	40	553,176	0.72	19.61
1994-1995	1,255*	60	572,273	1.05	21.93
1995-1996	1,365*	57	594,279	0.96	22.97
1996-1997	1,637*	46	610,540	0.75	26.81
1997-1998	1,793*	83	632,238	1.31	28.36
1998-1999	1,885*	76	651,244	1.17	27.89
1999-2000	2,197*	77	646,191	1.00	34.00
2000-2001	2,699*	87	650,719	1.34	41.48
2001-2002	3,099*	124	663,220	1.87	46.73
2002-2003	3,209*	156	675,332	2.31	47.52

* Source: University of the Pacific, McGeorge School of Law, Special Education Hearing Office. Figures include requests for mediation only and hearing requests. All hearing requests are automatically referred to mediation. Prior to 1993, a person was required to file a hearing request in order to obtain mediation.

Based on the information in Table 1, it is apparent that a very small percentage of services to students with Individualized Education Programs (IEPs) results in disputes resolved through due process. Most requests are settled with mediation rather than the more costly due process hearings.

The number of requests for hearings has steadily increased each year. The contract for these mediation and hearing requests exceeded \$10,000,000 in 2003-2004.

The CDE sponsored a competitively bid study of special education mediation and due process systems. This study, conducted by Special Education Law Associates, was completed February 29, 2000, and is available on the CDE Special Education Division web site, <http://www.cde.ca.gov/sp/se/ds/> ("Data Collection and Reporting"). The study formed the foundation for changes in policy direction by the State of California, which began with the June 1, 2000, to May 31, 2003, SEHO contract. Because the study demonstrated that the system historically was substantially under-funded, this survey also has served as the basis for CDE requests to the Legislature for additional funding for the contractor to conduct mediations and due process hearings. Some citations and references from the *Evaluation Study of Special Education Dispute Resolution Issues* (*Evaluation Study*) are used in this RFP and identified in italics.

The successful bidder must have working knowledge of federal and state laws and regulations that govern the activities of this SEHO RFP, which also can be found at <http://www.cde.ca.gov/sp/se/sr/selinks.asp> ("Special Education Resources").

III. SCOPE OF THE PROJECT

The contractor will provide hearings and mediations in a manner that is consistent with all applicable federal and state laws, regulations, and any other applicable legal authorities. All decisions must be written clearly and in a manner that demonstrates authoritative understanding of special education law. Decisions must be timely, sensitive to the needs of parents, reflect fiscal responsibility, and foster productive resolution of disputes.

The proposal submitted must demonstrate the bidder's understanding and proposed procedures for implementing the draft regulations and the recommendations made in the *Evaluation Study of Special Education Dispute Resolution Issues*. These recommendations anticipate significant on-going increases in personnel and fiscal resources being made available to the contractor, although the CDE cannot assure the availability of resources.

For bidding purposes, bidders should assume the following for **July 1, 2005 - June 30, 2006**:

- 3,900 requests for hearings
- 190 completed hearing decisions
- 47,000 hours to be paid to mediators
- 5.0 as the average number of days for hearings
- 3,100 law and motion orders
- 490 requests for mediation only
- \$197,000 cost for translators or interpreters
- \$568,000 cost for mediator and hearing officer travel

Based on prior trends, bidders should assume a 10 percent workload increase when preparing the **2006-2007** budget and another 10 percent increase for the **2007-2008** budget projection.

The *Evaluation Study of Special Education Dispute Resolution Issues* states that “an effective and efficient hearing and mediation system is largely dependent on the skill of the Hearing Officers who conduct the hearings and the Mediators who facilitate agreements.” Contributing to the success of the systems is the supervision, training, availability, and evaluation of personnel.

Bidders must address the following in their proposals:

A. Management and Staffing

1. Qualification and Compensation of Personnel

a) Hearing Officers

Hearing officers – whether they are employees, contracted individuals, or subcontracting agencies – must meet the minimum qualifications as specified in the RFP. (*Note: The text that appears below in italics is taken from draft regulations.*)

i. Section 3082.1: Hearing Officers: Minimum Qualifications

Hearing officers shall be attorneys licensed to practice law in California who have at least five years of full-time experience in the active practice of law, which shall have included at least two years of experience in the presentation of evidence and examination of witnesses before trial courts or quasi-judicial administrative bodies.

ii. Section 3082.2: Hearing Officers: Minimum Training Standards

(a) In addition to the “Minimum Qualifications” as set forth in section 3082.1, no hearing officer may assume her or his duties unless she or he possesses a working knowledge of the law and regulations governing services to pupils with exceptional needs who qualify for services under the Individuals with Disabilities Educational Act (IDEA) and related California laws and regulations. Hearing officers shall also possess familiarity with precepts central to the pedagogy in special education, including services and supports available to pupils with exceptional needs; and, a demonstrated ability to write clear and concise decisions.

(b) The entity responsible for conducting due process hearings shall ensure every hearing officer candidate receives the training necessary to ensure the candidate possesses the knowledge and skills needed to meet the competence standards set forth above before a hearing officer candidate assumes her or his duties.

iii. Section 3082.4: Hearing Officers: Impartiality and Conflicts of Interest

(a) No hearing officer will hear a case involving a contested issue of law or fact where it is established that the hearing officer has an actual or apparent conflict of interest as defined herein. If at any time in the proceedings a hearing officer determines she or he has a conflict of interest, the hearing officer may not continue to preside over any further proceedings, except to the extent it is necessary to

transfer the matter or take any other further actions as necessary for the orderly change of hearing officer.

(b) A hearing officer shall disclose to all parties any actual or apparent conflict of interest. A hearing officer shall not engage in conduct that creates the appearance of bias, prejudice, or partiality.

(c) A hearing officer who has a pecuniary interest in the outcome of the hearing is presumed to have a conflict of interest.

(d) A conflict of interest includes any condition that interferes with a hearing officer's objectivity, or has the potential to interfere with the hearing officer's objectivity. A conflict may exist if the hearing officer is acquainted with or related to any witness or party to the action or if the hearing officer has an interest in the outcome of the case.

(e) The hearing officer shall not be an employee, agent, board member, or contractor of the local educational agency or of the Department of Education, or a spouse, parent, child, brother, sister, grandparent, legal guardian, or conservator of the pupil with exceptional needs on whose behalf the due process proceedings are being conducted.

(f) Any hearing officer whose familial relationship extends to a pupil with exceptional needs shall not be associated with the hearing or disposition of a matter involving a school district or other entity in which the familial relation of the hearing officer is enrolled, has been enrolled, or prospectively is likely to be enrolled.

(g) A party or attorney appearing in a due process hearing may move to remove a hearing officer. Said motion must be initiated by written motion, supported by affidavit or declaration under penalty of perjury, in which facts are alleged establishing a prima facie case that the hearing officer before whom the due process hearing is pending or to whom it is assigned has a conflict of interest or is prejudiced against any party or attorney. Said motion shall be filed with the hearing officer no more than 10 days after the date the hearing officer becomes known to the party contesting the hearing officer's impartiality.

(h) The entity responsible for conducting due process hearings shall provide notice to the parties of the identity of the hearing officer sufficiently in advance of the due process hearing so that any motions regarding a conflict of interest may be timely made and heard.

iv. Compensation Policy

Bidders must indicate how salaries and benefits will be determined for Hearing Officer compensation. The rationale is to be included in the Technical Proposal; the rate information and schedules are to be included in the Cost Proposal. This cost must be incorporated in the budget and NOT included in the Technical Proposal.

v. Workload Standards

The *Evaluation Study of Special Education Dispute Resolution Issues* states that “The number of Hearing Officers employed by the Contractor must consider working conditions conducive to retaining Hearing Officers, including number of hours worked and required travel, and an adequate number of Hearing Officers [with]...qualification[s] and experience to implement the recommendations in this Report.”

Bidders must indicate the workload standards to be used for employment of Hearing Officers. Standards can be either those stated in the *Evaluation Study of Special Education Dispute Resolution Issues* or of a like nature.

b) Mediators

Mediators – whether they are employees, contracted individuals, or subcontracting agencies – must meet the minimum qualifications as specified in the RFP.

i. Qualifications

Bidders must demonstrate what qualifications will be used to select Mediators—whether the Mediators are employees, contracted individuals, or subcontracting agencies—and how employees/subcontractors are selected. Qualifications can be those stated in the *Evaluation Study of Special Education Dispute Resolution Issues*, or of like expertise and experience. If using the qualifications recommended in the *Evaluation Study*, bidders must describe how they will apply those recommendations. If not using the qualifications recommended in the *Evaluation Study of Special Education Dispute Resolution Issues*, bidders must describe the rationale for the qualifications proposed.

ii. Compensation

Bidders must indicate how salaries and benefits will be determined for Mediator compensation. The rationale is to be included in the Technical Proposal; the rate information/schedules are to be included in the Cost Proposal. This cost must be incorporated in the budget and NOT included in the Technical Proposal.

iii. Workload Standards

The *Evaluation Study of Special Education Dispute Resolution Issues* makes two recommendations related to workload standards:

- The mediation system should maintain a sufficient number of qualified Mediators to ensure mediation shall be offered within two weeks of the filing of a request for a hearing. The system has to assure that mediators are assigned on the basis of their availability within two weeks.
- The mediation system must include protocols for case management that ensure assigned mediators actively monitor and manage cases until mediation is waived due to impasse, or withdrawn. Regular reports must be submitted by the mediators to the...contractor on the status of all assigned cases, and the

[Mediator's] last contact with the parties. Since case management will require additional time allocated for each case, the budget for the mediation system must include consideration of the cost of this requirement at the increased level of qualifications and experience.

Standards can be those stated in the *Evaluation Study of Special Education Dispute Resolution Issues* or of a like nature. If not using the standards recommended in the *Evaluation Study of Special Education Dispute Resolution Issues*, bidders must describe the rationale for the workload standards proposed. Bidders must demonstrate how the recommendations for Mediator workload standards will be addressed. These standards must also reflect the need to provide translators, as necessary, within the same two-week timeline, and must be reflected in the budget.

2. Supervision and Evaluation of Personnel

a) Hearing Officers

(Note: The text that appears below in italics is taken from draft regulations.)

i. Section 3082.5: Hearing Officers: Supervision

(a) Every decision issued by a hearing officer following a due process hearing shall first be approved by a supervising agent of the entity responsible for conducting due process hearings before the decision may be issued by the hearing officer. Supervising agents shall review hearing officer proposed decisions for factual and legal accuracy as well as consistency with previous decisions.

(b) A supervising agent of the entity responsible for conducting due process hearings shall be experienced and knowledgeable in special education laws and principles. Supervising agents should have at least 10 years of experience in the practice of law and possess at significant experience in matters relating to special education, as well as significant experience in civil or criminal trial courts, appellate courts or administrative bodies where quasi-judicial proceedings are conducted.

(c) A supervising agent of the entity responsible for conducting due process hearings shall devote his or her professional services exclusively to the supervision or administration of hearing officers engaged in special education matters.

b) Mediators

Bidders must address the recommendations from the *Evaluation Study of Special Education Dispute Resolution Issues* in terms of how Mediators will be evaluated, how quality performance will be assured, and the number of Full Time Equivalent (FTE) personnel to be allocated for this purpose.

Specific aspects must include calendaring, case management, and needs

assessment processes for training. Bidders also must address the expected language diversity of the staff to be employed or with whom it will contract.

In addition the bidder must describe procedures for ensuring that interpreters for non-English speaking families are provided.

All supervision and management costs must be incorporated into the budget.

3. Training of Personnel

a) Hearing Officers

(Note: The text that appears below in italics is taken from draft regulations.)

iii. Section 3082.3: Hearing Officers: Required Ongoing Training Standards

The entity responsible for conducting due process hearings shall provide ongoing training for hearing officers as may be necessary to ensure hearing officers maintain familiarity with the law, procedures applicable to due process hearings and mediations, as well as changes in other pertinent legal and substantive matters concerning special education. Subjects to be included in trainings may include, but are not be limited to, due process hearing procedures, relevant new developments in caselaw relating to IDEA and applicable California laws and regulations, and, services and supports available to pupils with exceptional needs.

b) Mediators

The *Evaluation Study of Special Education Dispute Resolution Issues* makes recommendations on the amount, frequency, and content of training for staff and contractors.

Bidders must describe how staff/contractor training will be conducted and /or provided, how training topics will be determined, what training will occur, the proposed range of days and topics for training, and who will conduct the training.

The cost for training must be incorporated into the budget.

B. Work Plan

1. The Hearing Process

The *Evaluation Study of Special Education Dispute Resolution Issues* addresses five components of the hearing process: 1) pre-hearing process; 2) disclosure; 3) orderly and respectful conduct of the process; 4) expedited hearings; 5) and decisions.

Bidders must describe the systems to be used to provide hearings. Bidders must demonstrate the capacity to modify this system(s), given any changes in laws or regulations. Bidders must discuss their adaptability and flexibility, and how changes in procedures that could occur while the contract is in effect will be dealt with.

Bidders must address what system(s) will be used for communicating with the CDE when hearings are requested and stay-put is invoked. This communication system will assist the CDE in investigating any complaints associated with the same parties.

Proposals must discuss the following six components:

a) General Management of Hearing Process

Bidders must describe the processes to be used for 1) intake; 2) calendaring; 3) assignment; 4) monitoring; 5) and coordination with the mediation process. **Bidders must address strategies for ensuring that the final decision in a due process hearing be reached and a copy mailed to the parties not later than 45 days after the receipt of a request for a hearing.**

b) Pre-hearing Process

Bidders must address a system to be used to implement pre-hearing recommendations and describe what this system may be. Bidders must also address specific plans to provide ongoing training that will occur (at least once a year) to ensure consistency in any pre-hearing process that might be required. The training must be reflected in the management plan.

c) Disclosure, Closing Arguments, and Briefs

The *Evaluation Study of Special Education Dispute Resolution Issues* suggests changes in the hearing process and recommendations on Hearing Officer authority.

Bidders must comment on disclosure, closing arguments, and briefs recommendations and indicate processes to be used to implement the recommendations.

d) Orderly and Respectful Conduct of the Process

The *Evaluation Study of Special Education Dispute Resolution Issues* recommends, "...contractor develop recommendations to the CDE for sanctions for failure of a representative to act in a professionally appropriate and constructive manner in mediations or due process hearings."

Bidders must address how this recommendation will be implemented to strengthen the orderly and respectful conduct of the process.

e) Expedited Hearings

Bidders must address the process for Expedited Hearings.

f) Decisions

The *Evaluation Study of Special Education Dispute Resolution Issues* has recommendations in this area.

Bidders are to address these recommendations on decisions in their proposal.

2. The Mediation Process

Bidders must include suggestions to improve mediations in California and to encourage use of mediation earlier in the dispute resolution process. Suggestions could include expanding the awareness and the use of mediation, whether or not there is a request for a hearing.

Bidders must address what system(s) will be used for communicating with the CDE when mediation only is requested and stay-put is invoked. This communication system will assist the CDE in investigating any complaints associated with the same parties.

3. Data Reporting

In addition to the *Evaluation Study of Special Education Dispute Resolution Issues* addressing the issue of data reporting, the federal Office of Special Education Programs (OSEP) expects the CDE to have more extensive information on the mediation and hearing processes. The state's system of monitoring and ensuring local district compliance is dependent on a data system that will identify districts requiring state-level intervention. With direction from the CDE, the contractor shall collect and provide data in standardized formats, which allow the CDE to manage and report on all mediation and due process activities in the state.

Bidders must propose how specific data and information will be collected and transmitted electronically and in writing to CDE on a monthly basis. The reports must contain data to provide the state with critical information to comply with federal and state regulations for monitoring local programs. Bidders shall identify applicable data to be collected, analyzed, and formatted including:

- Caseloads
- Status of cases
- Outcomes for all activities: mediation only, mediations, and hearings

Among the data to be collected, the bidder must provide CDE with the following information:

Formal complaints: 1) Number of complaints; 2) number of complaints with findings; 3) number of complaints with no findings; 4) number of complaints not investigated – withdrawn or no jurisdiction; 5) number of complaints completed/addressed within timelines; 6) number of complaints pending

Mediations: 1) Number of mediations not related to hearing requests; 2) number of

mediations related to hearing requests; 3) number of mediation agreements not related to hearing requests; 4) number of mediation agreements related to hearing requests; 5) number of mediations pending

Due process hearings: 1) Number of hearing requests; 2) number of hearings held; 3) number of decisions issued after timelines and extension expired; 4) number of hearings pending

Additional examples of data to be provided are requests filed, case status, district from which the request originated, number of expedited hearings, issues, case resolution, prevailing party, demographic descriptors, duration and results of any mediation and due process decisions, including any mediated agreements.

Upon completion of the hearing decision reports, the contractor will submit hard copies to CDE. Furthermore, the contractor administers and uploads all redacted reports on a monthly basis to CDE's hearing decision database. The contractor must have the ability to provide CDE with the costs of hearings and/or mediations on both an aggregate and individual basis.

4. Protocols and Manuals

The *Evaluation Study of Special Education Dispute Resolution Issues* recommends, "A hearing and mediation manual or common core of procedures should be developed for Hearing Officers and Mediators on the pre-hearing process, the conduct of a hearing, and the conduct of mediation."

Bidders must include a discussion of the development of such manuals in their proposals, including the timeline for their implementation. The CDE expects the contractor to maintain current manuals and protocols, with updates annually and whenever there are substantive changes in laws or regulations.

Additionally, bidders shall inform the CDE of printed forms, procedures and brochures it will have available, and in what languages. At a minimum, all public forms, procedures, and brochures shall be made available in English and the five foreign languages most commonly spoken in California schools: Spanish, Vietnamese, Hmong, Cantonese, and Philipino.

5. Advisory Committee

The bidder must include an advisory committee composed of individuals with diverse and extensive involvement in the system, which meets a minimum of twice annually with the contractor to advise on the design of solutions for systemic issues as they arise. Bidders must describe how they will select issues for consideration by the advisory committee.

Bidders must provide a description of how they will select the advisory committee and ensure diverse representation. Parents of children with disabilities must be included on the advisory committee and a description of how the bidder will make

appropriate child care available at no cost to these parents must be included.

The budget for the contractor must include a budget for travel expenses of the advisory committee. In order to limit costs, the bidder should consider separate north-south advisory committees of 12-15 people each, with committees meeting a minimum of twice annually.

6. Transition Period

The month of **June 2005** will be for transition purposes from the existing contractor to the winner of the award based on this RFP. This time period may be necessary for a smooth transition, which includes planning for hiring and training of personnel, developing forms for filing of mediation and hearing requests, informing the public of contact names, addresses, fax and phone numbers, planning for completion of mediations and hearings already begun, and other areas of transition. The new contractor has no obligation to retain existing Mediators or Hearing Officers.

Bidders must include activities to be conducted during the transition period and provide a separate budget for these activities.

IV. GENERAL PROPOSAL INFORMATION

A. Eligible Applicants

The bidder must be legally constituted and qualified to do business within the State of California.

B. Contract Funding and Time Period

There are four different time periods for this contract, and separate budgets must be provided for each state fiscal year:

June 1, 2005 to June 30, 2005	Planning and transition budget
July 1, 2005 to June 30, 2006	Implementation of the accepted proposal
July 1, 2006 to June 30, 2007	The amount funded for the July 1, 2005, to June 30, 2006 time period can be increased by estimated workload, salary, cost of living, and merit increases. These increases are to be based on the compensation policy submitted as a part of the proposal.
July 1, 2007 to June 30, 2008	The amount funded for the July 1, 2006, to June 30, 2007 , time period can be increased by estimated workload, salary, cost of living, and merit increases. These increases are to be based on the compensation policy submitted as a part of the proposal.

It is anticipated that this contract will begin **June 1, 2005, and will run through June 30, 2008**. The actual starting date of the contract is contingent upon approval of the

agreement by the Department of General Services (DGS) and continued legislative authorization.

C. Inquiries

Bidders may submit questions, requests for clarification, concerns, and/or comments (hereinafter referred to collectively as “questions”) regarding this RFP. All questions must be submitted in writing by **5 p.m. on January 14, 2005**. The bidder must include its name, e-mail address, and telephone number in its submission. The bidder must specify the relevant section of the RFP for each question submitted. The CDE will publish written responses on its Web site by **5:00 p.m. on January 31, 2005**. Questions may be submitted by e-mail to Allison Smith, Contract Monitor, at asmith@cde.ca.gov, or by postal service addressed to:

California Department of Education
Special Education Division
Administrative Services Unit
Attn: Allison Smith
1430 N Street, Suite 2401
Sacramento, CA 95814

Only questions submitted by e-mail or post will be accepted. All questions must be received by **5 p.m. on January 14, 2005**.

D. Time Schedule

This section summarizes the timeline of the RFP.

Activity	Date
Request for Proposal (RFP) released	December 17, 2004
Questions/requests for additional information due to CDE	January 14, 2005, 5 p.m.
Response to questions/requests for additional information posted	January 31, 2005, 5 p.m.
Proposals due	February 15, 2005, 5 p.m.
Review of proposals	February 16 – March 3, 2005
Cost bid opening date	March 4, 2005, 10 a.m.
Posting of proposed awardee and public inspection of proposals	March 7 – March 11, 2005
Written notification to awardee	March 14, 5 p.m. if no protest
Contractor begins work (estimated)	June 1, 2005

V. PROPOSAL SPECIFICATIONS

A. General Requirements

It is mandatory that the proposal submitted complies with the format and content requirements detailed in this section. All proposals must be clearly labeled on the outside of the envelope with the proposal title:

REQUEST FOR PROPOSAL (RFP) SPECIAL EDUCATION MEDIATIONS AND DUE PROCESS HEARINGS

Each bidder must submit to the CDE a proposal, which provides proof of its experience, its qualifications to conduct the required activities and its approach to completing those tasks and (separately) the estimated costs for doing so. One original and ten copies of both the Technical and Cost Proposals are due by **February 15, 2005, at 5 p.m.** These must be delivered to:

California Department of Education
Special Education Division
Administrative Services Unit
1430 N Street, Suite 2401
Sacramento, CA 95814
ATTN: Allison Smith

Transmission by electronic mail (modem/internet) or facsimile (fax) shall not be accepted. It is the bidder's responsibility to ensure that the submission reaches the Special Education Division in Suite 2401 by the deadline. Sufficient time should be allowed for the submission to go through the appropriate steps to reach Suite 2401: (1) check in with security guard in lobby; (2) security guard to phone Allison Smith at 327-3932 or Bounthay Bouttavong at 445-4585 in the Special Education Division to obtain authorization for bidder/bidder's representative to enter Suite 2401; and (3) bidder/bidder's representative to deliver the package(s) to Suite 2401. CDE staff cannot assist bidders in meeting the requirements of this RFP. Proposals received in the Special Education Division at the address noted above after the time and date specified shall not be accepted and shall be returned to the sender unopened and marked "LATE RESPONSE".

The terms and conditions within the State's proposed agreement as set forth herein are not negotiable. In the event a proposal is submitted that in any way deviates, alters, modifies, or otherwise qualifies any of the terms herein, the proposal will be rejected and eliminated from the review process.

The successful bidder's Technical Proposal, along with the Cost Proposal, will be incorporated into the final contract, which is a public document. All bidders' Technical Proposals and Cost Proposals that are opened are public documents. All Technical Proposals and Cost Proposals submitted pursuant to this RFP will become the property of the State of California.

Do not include the "budget" or any financial or price information with the Technical Proposal sections.

B. Disabled Veteran Business Enterprise Participation Goal

Public Contract Code Section 10115 requires that state contracts have a participation goal of 3 percent for disabled veteran business enterprises (DVBE) as defined in Military and Veterans Code Section 999 (see Attachment A). In addition, Public Contract Code Section 10115.2 requires that contracts be awarded "to the lowest responsible bidder meeting or making good faith efforts to meet these goals."

In order to be responsive to this RFP, the bidder must comply with either Option A or Option B below and so indicate on Attachment 3-A:

Option A. Commitment to full DVBE participation:

The bidder is a DVBE and commits to performing at least three percent (3%) of the bid amount itself or in combination with other DVBE(s); or

Commit to using OSDC certified DVBE(s) for at least three percent (3%) of the bid amount.

Compliance with "meeting the goal" shall be certified by completing Attachment 3-A (DVBE1). A letter of commitment prepared by other participating DVBE subcontractor(s)/supplier(s), including the goods or services being provided and a copy of the OSDC DVBE certification, must be attached to the DVBE1.

Option B. Good Faith Effort (GFE)

Performance and documentation requirements must be completely satisfied prior to bid submission. Perform and document the following Steps 1 through 5 on both sides of the attached DVBE1. Failure to document GFE Steps 1 through 5 as instructed, which includes properly completing and submitting the DVBE1, will result in rejection of the bid. Note: Step 3, Advertisement, is required unless specifically waived for this solicitation, by CDE.

Contact the CDE's Contracts Office at (916) 322-3035 for assistance in identifying potential DVBEs; and

Contact other state and federal government agencies and local DVBE organizations to identify potential DVBEs which could provide goods/services applicable to this contract (see Attachment 3); and

Advertise in trade papers and papers focusing on DVBEs at least fourteen (14) calendar days prior to the due date for the proposal, CDE requires two separate publications (see Attachment 3).

Invite (solicit) DVBEs who can provide relevant goods and/or services (commercially

useful function) relevant to this solicitation. Conducting Steps 1 through 3 produces a list of DVBEs from which potential DVBEs may be chosen. Bidders are advised to contact as many DVBEs (who provide relevant goods and/or services in the applicable location(s)) as possible; and

Consider all responding DVBEs for contract participation. Consideration must be based on business needs for the contract and the same evaluation criteria must be applied to each potential DVBE subcontractor/supplier offering the same goods and services (commercially useful function).

Compliance with "good faith effort" shall be documented by completion of Attachment 3-A indicating dates/times/contact names for agencies contacted; names of papers used and date(s) of advertising and a copy of the advertisement; names of potential DVBEs solicited and date(s) of solicitation; and names of those considered for participation and, if applicable, the reasons for non-selection. In addition, a letter of commitment prepared by participating DVBE subcontractor(s)/supplier(s), including the goods or services being provided and a copy of the OSDC DVBE certification, must be attached to the DVBE1.

Final determination of either "goal attainment" or "good faith effort" by the bidder shall be at the sole discretion of the CDE.

C. Technical Proposal Sections

The proposal must demonstrate bidder's ability to meet all qualifications, requirements, and standards specified in this RFP. Each section must be well organized and succinct.

1. The Cover Letter must certify that the bidder will ensure that supervising agents and that all hearing officers and mediators – whether they are employees, contracted individuals, or subcontracting agencies – will meet the minimum qualifications as specified in the RFP. The Cover Letter must be signed by the individual qualified to make the offer to perform the work described. Individuals signing this letter on behalf of their organization must indicate their position title, certifying that they are authorized to make the offer on behalf of the organization.
2. The Table of Contents must identify major points of discussion by page.
3. The General Approach must provide an overview of the approach to be taken in providing the services described in the Scope of the Project section of this RFP.
4. The Management and Staffing section must present a plan for the internal management of contract work that will ensure accomplishment of the tasks. This section must include a staff organizational plan, identifying by name staff to be assigned to the management and supervision of the project, the amount of time to be devoted to each task, lines of responsibility and approval authority, list of job duty responsibilities, and the name of the person who will act as project director. The plan must make clear the relationship of each position to the work plan and must include a staff organization

chart. The proposal must identify individuals proposed to fill management and supervisory positions and must include for each a résumé sufficiently detailed to allow an evaluation of the person's competency and expertise. This section must address the draft regulations and the *Evaluation Study of Special Education Dispute Resolution Issues* recommendations on supervision and evaluation, training of personnel, and the language diversity of the bidder's proposed staff. It must also address the management process to be used to ensure meeting all required timelines, including expedited hearings.

If subcontractors - except for supervising agents, hearing officers, and mediators - will be used, the proposal must include letters of commitment from the subcontractor(s) and documentation of ability to fulfill the scope of work and demonstrate appropriate experience and expertise. These letters must specify the tasks to be performed by the subcontractor. Do not include any subcontractor rate information in the Technical Proposal. Subcontracting with independent individuals for mediation does not require letters of commitment.

5. The Work Plan must describe in detail the tasks and activities to be undertaken in order to accomplish the purpose of the contract. Any anticipated theoretical or practical problems associated with the completion of each task should be discussed and solutions, alternatives, or contingency plans related to these problems must be proposed as appropriate. The work plan must include proposed task initiation and completion dates and levels of effort (i.e., hours) by task for proposed personnel.

6. The Related Experience section must describe the experience of the bidder in providing services required and must address specific experience and expertise in providing mediation and conducting administrative hearings, particularly hearings where the legal rights and obligations of parties involve constitutional due process or other constitutional rights. The bidder must describe its working knowledge of federal and state special education laws and regulations about which it will be conducting hearings and mediations. The project manager assigned to this project must have at least five years' experience managing similar projects of comparable scope and size.

7. The Examples of Previous Work section must include three examples of previous work done that is comparable to the scope of this RFP. Written reports, outside agency monitoring reports, evaluations and so forth are also acceptable submissions.

8. The References section must include at least three detailed client references relevant to the scope and complexity of the services required by this RFP. These references must include a description of the services performed, the date of these services, and the name, address and telephone number of the client reference.

9. The Nondiscrimination Compliance Statement (Std. 19) must be signed and dated with an original signature with each copy of the proposal (attached to this RFP as Attachment 1).

10. The Small Business Preference Sheet must be completed (attached to this RFP as Attachment 2). If the preference is being claimed, a copy of the certification letter from OSDC must be included.

11. The Documentation of DVBE Program Requirements must be completed (attached to this RFP as Attachment 3a).

12. The Certification Regarding Provision of a Drug-Free Workplace (attached to the RFP as Attachment 5) must be signed as a condition of receipt of the contract. However, this form need not be signed and included with the proposal but may be submitted with the proposal if bidder so chooses.

13. Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters is to be signed and attached (Attachment 6).

Do not attach pamphlets or other items that are not specifically requested in this section.

D. Cost Proposal

This must be provided in a separate sealed envelope, clearly marked as indicated below. The Cost Proposal must contain a detailed line item budget for completion of the work outlined in the Technical Proposal. The Cost Proposal must be broken down by budget line items and by major tasks. The Cost Proposal must provide a clear computation and explanation of all rates, including indirect cost detail. All staffing titles used in the Cost Proposal must correspond to the staffing titles used in the Technical Proposal. The Cost Proposal must include the following items:

- Labor cost detail, including hourly or billing rates for all personnel and the total number of hours projected for this project
- Operating expense detail
- All subcontractor expenses must be displayed in the same manner.

All costs are to be broken down into each of four sections, based on the four budget periods. Separate budgets are required for four different time periods:

June 1 – June 30, 2005

July 1, 2005 – June 30, 2006

July 1 2006 - June 30, 2007

July 1, 2007 - June 30, 2008

These time periods are designed to match the state budget period and authorized funding amounts. Bidders are to include the estimated salaries to be paid to personnel in future years based on placement on salary schedules, and the salary schedules must be included as a part of the Cost Proposal.

Do not package any non-Cost Proposal materials in the Cost Proposal envelope or

package. CDE will not open a sealed Cost Proposal package for any reason during the Technical Proposal review process.

The outside of the sealed envelope containing the Cost bid information must read:

Special Education Mediation and Due Process Hearings
Competitive Bid
Do not open before March 4, 2005 at 10 a.m.
At 1430 N Street, Suite 2401
Sacramento, CA 95814

The first page of the Cost Proposal must be a Cover Sheet. Only the Cover Sheet will be read at the bid opening. The Cover Sheet must indicate the TOTAL amount of the bid for the overall contract without any cost breakdowns. The Cover Sheet must state:

“[Name of bidder] proposes to conduct the work associated with the Special Education and Due Process Hearings, as described in this RFP for \$_____.”

The contract will be awarded to the lowest responsible bidder meeting the requirements of this RFP.

VI. MONITORING ACTIVITIES

The CDE will assign a contract monitor. The contractor must submit monthly reports to the monitor. These reports will address activities conducted and planned, as well as concerns or obstacles. Information described in the data reporting section of the proposal is to be included. All data collection instruments must be submitted for review prior to administration. The monthly invoices are required to accompany the monthly reports. Payment of invoices will be dependent upon receipt of the monthly reports. CDE expects the contractor to work closely with the CDE contract monitor and other CDE staff including making data available for placement on the CDE website. The CDE contract monitor must keep the contractor informed of changes in the CDE administrative policies, such as travel processes, reimbursement rates, etc., as well as legal and policy information that affect the contractor's work.

The contract monitor must work closely with the CDE Special Education Division's staff that work in the areas of complaints and procedural safeguards to ensure a uniform understanding of the various processes available to parents, children, and school personnel. Any identified necessary changes in laws or regulations shall be proposed through the contract monitor to the CDE.

VII. CONTRACT TERMS AND REQUIREMENTS

A. Conflict of Interest

1. Current State Employees (PCC 10410):

No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored by any state agency unless the employment activity, or enterprise is required as a condition of regular state employment.

No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

2. Former State Employees (PCC 10411):

For the two-year period from the date of leaving state employment, no former state officer or employee may enter into a contract in which he or she was engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

For the twelve-month period from he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of the above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

B. Compensation

Payments will be made in arrears on a monthly basis upon receipt of an itemized invoice and a monthly progress report. Final payment at the end of the contract, June 30, 2008, will not be made until the state contract monitor submits a completed a Std. 4 Contract/Contractor Evaluation indicating satisfactory performance by contractor.

All travel costs shall be reimbursed at rates not to exceed those established for CDE nonrepresented employees, computed in accordance with and allowable pursuant to applicable Department of Personnel Administration regulations (Attachment 6).

Surplus funds from a given line item of the budget, up to ten percent of that line item, may be used to defray allowable direct costs under other budget line items with prior CDE contract monitor approval. Any budget line item change of more than ten percent requires a contract amendment and approval by the State Department of General Services, if required by State law or policy. Additional funds will only be added to support additional workload.

C. Contract Requirements Related to DVBE Participation Goals

Substitution of a DVBE

- a. After award of a contract, the successful contractor must use the DVBE subcontractor(s) and/or supplier(s) proposed in the solicitation response to the State per Title 2 Section 1896.62 unless a substitution is requested. The contractor must request the substitution in writing to the contract monitor and the CDE must have approved the substitution in writing. At a minimum the substitution request must include:
 1. A written explanation of the reason for the substitution; and if applicable, the contractor must also include the reason a non-DVBE subcontractor is proposed for use.
 2. A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm, if any.
 3. A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substituted firm will perform.
- b. The request for substitution of the DVBE subcontractor/supplier must be approved in writing by the awarding department prior to commencement of any work by the subcontractor/supplier.
- c. The request for substitution of a DVBE and the awarding department's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Sections 4100 et seq., Public Contract Code) or any other contract requirements relating to substitution of subcontractors.
- d. If a contractor requests substitution of its DVBE subcontractor(s)/supplier(s) by providing a written request in accordance with Title 2 Section 1896.64(c), CDE may consent to the substitution of another person as a subcontractor in any of the following situations:
 1. When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when that written contract based upon the general terms, condition, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
 2. When the listed subcontractor becomes bankrupt or insolvent, or goes out of business.
 3. When the listed subcontractor fails or refuses to perform his or her subcontract.
 4. When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor.
 5. When the prime contractor demonstrates to the awarding department, or its duly authorized officer, that the name of the subcontractor was listed as the

- result of an inadvertent clerical error.
6. When the listed subcontractor is not licensed pursuant to any applicable licensing requirement of any regulatory agency of the State of California.
 7. When the CDE, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the process of the work.
- e. Prior to approval of the prime contractor's request for the substitution, the CDE, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.
- f. If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding department on the prime contractor's request for substitution.

The request and the State's approval or disapproval is NOT to be construed as an excuse for noncompliance with any other provision of law, including but not limited to, the Subletting and Subcontracting Fair Practices Act or any other contract requirements relating to substitution of subcontractors.

Failure to adhere to at least the DVBE participation proposed by the successful bidder may be cause for contract termination and recovery of damages under the rights and remedies due the State under the default section of the contract.

Reporting

The successful contractor must agree to provide reports of actual participation by DVBEs (by dollar amount and category) as may be required by CDE to document compliance.

Compliance Audit

The Contractor must agree that the State or its designee will have the right to review, obtain, and copy all records pertaining to performance of the contract. The Contractor must agree to provide the State, or its designee, with any relevant information requested and shall permit the State, or its designee, access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. The Contractor must further agree to maintain such records for a period of five (5) years after final payment under the contract.

D. Staff Replacements

The contractor will be required to inform the CDE contract monitor when changing professional project personnel within 30 days of the initiation or termination of association.

E. Ownership of Materials

All materials developed under the terms of this agreement will become the property of the CDE. The CDE reserves the exclusive rights to copyright such material and to publish, disseminate, and otherwise use materials developed under the terms of this agreement.

F. Retention of Records

The contractor shall maintain accounting records and other evidence pertaining to costs incurred, with the provision that the contractor shall keep them available during the contract period and thereafter for five full years from the date of the final payment. Upon demand and without prior notice, the CDE must be permitted to audit, review, and inspect the contractor's activities, books, documents, papers, and records during progress of the work and for five years following final payment. All documents associated with mediations and hearings must be retained for the same time period.

G. Equipment

Equipment can be purchased if provided for in an approved contract budget. Ownership of the equipment remains with the CDE. The contractor shall work through the CDE contract monitor on the transfer and disposition of equipment no longer needed by the contractor. If equipment purchased through contract with CDE is to be used by the contractor on other projects or contracts, an appropriate reimbursement schedule shall be established with the CDE contract monitor, or the initial costs shall be pro-rated. Equipment is to be purchased through bidding or documentation of the most reasonable price.

H. National Labor Relations Board Certification

By signing the contract, the contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two year period because of the contractor's failure to comply with an order of a Federal Court which orders the contractor to comply with an order of the National Labor Relations Board.

I. Anti-trust Claims (Government Code Sections 4552-4554)

In submitting a bid to a public purchasing body, bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title and interest in and to all

causes of action it may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2) commencing with Section 16700 of Part 2 of Division 7 of the Business and Professions Code, arising from purchases of goods, materials or services by bidders for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to bidder.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

J. Recycled Paper Certification (Public Contract Code Sections 10308.5/10354)

By signing the contract, the contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Public Contract Code Sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content.

K. Air or Water Pollution Violations (Government Code Section 4477)

By signing the contract, the contractor swears under penalty of perjury that the contractor is not: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control District; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibition; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

L. Child Support Compliance Certification (Public Contract Code Section 7110)

By signing this agreement, the contractor acknowledges that (a) it recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement

including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of part 5 of Division 9 of the Family Code; and (b) to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

M. Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

N. Union Organizing and Activities

1. By signing this agreement the contractor hereby acknowledges the applicability to this agreement of Government Code Section 16645 through Section 16649.

- a. Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b. No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d. d.If the contractor incurs costs or makes expenditures to assist, promote or deter union organizing, the contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs. The contractor shall provide these records to the Attorney General upon request.

2. Contractor hereby certifies that no request for reimbursement or payment under this agreement will seek reimbursement for costs incurred to assist, promote or deter union organizing.

O. Privacy, Security, and Confidentiality Statement

If, in the course of carrying out this work, the contractor gathers or processes personal (private) information, the contractor must provide written assurance that the data will be managed in accordance with all applicable federal and California state privacy laws including, but not limited to: Family Educational Rights and Privacy Act of 1984 (20 U.S.C. Sec. 1232g) and Children's Online Privacy Protection Act (COPPA), and

California Education Code sections 49069 to 49079. Examples of personal information include, but are not limited to: name, telephone, e-mail account, address, date of birth and social security number.

In addition, the contractor will be expected to demonstrate that it has taken specific steps to ensure the data are kept secure and confidential as evidenced by, at a minimum, the following:

Each and every employee, subcontractor or other person who has access to personal information is required to sign a statement that they understand that the information is personal and they will take steps to ensure that unauthorized personnel do not gain access to personal data.

Personal data, while being transmitted electronically, must be encrypted. Any repository for the data will be locked and have access restricted to those personnel that have a legitimate need to access the data and have signed a confidentiality agreement.

Any security breach must be reported to CDE immediately.

CDE considers mailing information (including e-mail address) to be personal (private). As such, if the contractor asks a person for his or her mailing information, the contractor must make it clear to the person providing the information whether the information will be shared with any organization other than CDE and the contractor. In addition, the contractor will provide the person providing the mailing information an “opt-out” (i.e. the person can elect to not have his or her mailing information shared with organizations outside of CDE and the contractor).

P. Data Ownership

The contractor understands that any and all data that is collected and/or generated by the work performed in this contract are the sole property of the California Department of Education. The contractor will deliver all data, in a format specified by CDE, to CDE or its agent within 15 calendar days of the date requested.

Q. Contracts Funded by the Federal Government

It is mutually understood between the parties that this contract may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract were executed after that determination was made.

This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the Fiscal Year(s) covered by this agreement for the purposes of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute

enacted by the Congress, which may affect the provisions, terms, or funding of this contract in any manner.

It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

The department has the option to void the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction of funds.

The recipient shall comply with the Single Audit Act and the reporting requirements set forth in OMB Circular A-133.

VIII. EVALUATION PROCESS

Each proposal will be evaluated to determine responsiveness to the requirements and standards as described in this RFP. The CDE reserves the right to reject any or all proposals. Nothing herein requires the awarding of a contract in response to this RFP. The selection process complies with the requirements for competitive bidding in the State Public Contract Code section 10344(b) requiring prospective bidders to submit their Technical Proposals and Cost Proposals in separate sealed envelopes.

Following the time and date for receipt of proposals, each Technical Proposal will be opened and evaluated using a two-step process.

Step I consists of three parts. The initial two parts of the first step (Step I, Part 1 and Step I, Part 2) pertain to proposal requirements and minimum qualifications and standards. Step I, Part 1 is adherence to proposal requirements; proposals will be evaluated on a yes/no basis for all criteria. Receipt of a "no" in Step I, Part 1, will result in elimination of the proposal from further consideration.

Step I, Part 3, performance evaluation, will yield numeric score ratings. A review panel will rate proposals on criteria described in the performance section. Any proposal receiving a rating of less than 90 points will be rejected.

The second step (Step II) of the process is the public opening of the envelopes containing the Cost information. Only those proposals passing the first step of the process will have their envelopes opened and read. The public opening of the Cost Proposals for those passing the first step (Step I) will be held:

**March 4, 2005
10 a.m.
1430 N Street, Room 2403
Sacramento, CA 95814**

The CDE will review the Cost Proposals for compliance with the standards and requirements in the RFP, including a comparison of the hours in the Cost Proposal with the

hours in the management and staffing component of the Technical Proposal

The Small Business Preference will be computed, if required documentation is included in the proposal, and adjustments to bid prices will be made accordingly. The contract will be awarded to the lowest responsible bidder meeting the specifications as described above.

A notice of the proposed contractor to receive the award will be posted for five working days beginning **March 7, 2005**, at 1430 N Street, Personnel Office. After the five-day notice period, the proposed awardee will be formally notified by mail. During the same five-day period, proposals and rating sheets will be available for public inspection at 1430 N Street, Suite 2401 during normal business hours.

IX. CONTRACT AWARD PROTEST PROCEDURES

If prior to the formal award, any bidder files a protest with the Department of General Services against the awarding of the contract, the contract shall not be awarded until either the protest has been withdrawn or the Department of General Services has decided the matter. Within five days after filing the protest, the protesting bidder must file with the Department of General Services a full and complete written statement specifying the grounds for the protest. Protests shall be limited to those specified in Public Contract Code section 10345 (Attachment 4 describes the protest procedures to be followed by a bidder filing a protest).

X. RATING CRITERIA AND EVALUATION FORM

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Name of Bidder

Step I, Part 1 - Adherence to Proposal Requirements

(Rated on a yes/no basis) Receipt of a "no" in Step I, Part 1, will result in elimination of the proposal from further consideration.

yes	no	The Technical Proposal and Cost Proposal were received by 5 p.m. on February 15, 2005.
yes	no	One original signed and ten copies of the Technical Proposal were submitted.
yes	no	The Technical Proposal has a cover letter signed by an authorized representative.
yes	no	The Cost Proposal was submitted in a separate, sealed envelope.

Step I, Part 1 - Adherence to Proposal Requirements (continued)

yes	no	<p>Required forms were submitted with each copy of the Technical Proposal:</p> <p><input type="checkbox"/> Nondiscrimination Compliance Statement (Attachment 1) completed with original signature.</p> <p><input type="checkbox"/> Small Business Preference Sheet (Attachment 2) is completed and a copy of the OSDC certification letter is included if the preference is being claimed or date of application indicated if not yet certified.</p> <p><input type="checkbox"/> California Disabled Business Enterprise (DVBE) Participation Goal attachments:</p> <p><input type="checkbox"/> Attachment 3-A</p> <p><input type="checkbox"/> Commitment letter from each participating DVBE</p> <p><input type="checkbox"/> Certification letter from OSDC for each participating DVBE</p> <p><input type="checkbox"/> <i>CDE Contracts Office has determined compliance with DVBE participation goals.</i></p> <p><input type="checkbox"/> Drug-Free Workplace Certification (Attachment 5) (Note: this form need not be completed and returned with the proposal. However, certification is a condition of receipt of the contract.)</p> <p><input type="checkbox"/> Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (Attachment 6)</p>								
yes	no	<p>Proposal presented in the format required by the RFP and included all required sections: (check ✓ if included)</p> <table border="0"> <tr> <td><input type="checkbox"/> 1. Cover Letter</td> <td><input type="checkbox"/> 5. Work plan</td> </tr> <tr> <td><input type="checkbox"/> 2. Table of Contents</td> <td><input type="checkbox"/> 6. Related Experience</td> </tr> <tr> <td><input type="checkbox"/> 3. General Approach</td> <td><input type="checkbox"/> 7. Examples of Previous Work</td> </tr> <tr> <td><input type="checkbox"/> 4. Management and Staffing</td> <td><input type="checkbox"/> 8. References</td> </tr> </table>	<input type="checkbox"/> 1. Cover Letter	<input type="checkbox"/> 5. Work plan	<input type="checkbox"/> 2. Table of Contents	<input type="checkbox"/> 6. Related Experience	<input type="checkbox"/> 3. General Approach	<input type="checkbox"/> 7. Examples of Previous Work	<input type="checkbox"/> 4. Management and Staffing	<input type="checkbox"/> 8. References
<input type="checkbox"/> 1. Cover Letter	<input type="checkbox"/> 5. Work plan									
<input type="checkbox"/> 2. Table of Contents	<input type="checkbox"/> 6. Related Experience									
<input type="checkbox"/> 3. General Approach	<input type="checkbox"/> 7. Examples of Previous Work									
<input type="checkbox"/> 4. Management and Staffing	<input type="checkbox"/> 8. References									
yes	no	<p>Materials and/or descriptions listed below included:</p> <p><input type="checkbox"/> A current organization chart indicating staff, by name, that would be assigned to this project and the amount of time devoted to each task, list of responsibilities, and approval authority</p> <p><input type="checkbox"/> Résumés for key personnel</p> <p><input type="checkbox"/> Three copies of actual products to document experience</p> <p><input type="checkbox"/> Three detailed client references</p>								

STEP I, PART 2 - MINIMUM QUALIFICATIONS

(Rated on a yes/no basis)

Did the bidder show clear evidence of meeting the following conditions?

yes	no	The bidder has addressed specific experience and expertise in providing mediation and conducting administrative hearings, particularly hearings where the legal rights and obligations of parties involve constitutional due process or other constitutional rights.
yes	no	The bidder must describe its working knowledge of federal and state special education laws and regulations about which it will be conducting hearings and mediations.
yes	no	The project manager assigned to this project has at least five years' experience in managing similar projects of comparable size and scope.

PROCEED TO PERFORMANCE EVALUATION?

Yes. This bidder has adhered to the proposal requirements and has met the minimum qualifications.

Signature of Reviewer

No. This proposal has been disqualified for the following reason(s):

Signature of Reviewer

STEP I, PART 3 - PERFORMANCE EVALUATION

A panel will review the proposals on the criteria listed below. One hundred points are possible. Any proposal receiving less than a 90-point rating will be rejected.

Points Possible	Points Awarded	
		General Approach / Understanding of the Project (10 points)
5		Degree of understanding of the due process and special education systems in California as described in an overview of the approach to be taken in providing services.
5		Degree of understanding of the scope of the project, including recommendations proposed in the <i>Evaluation Study of Special Education Dispute Resolution Issues</i> .

Step I, Part 3 - Performance Evaluation (continued)

Points Possible	Points Awarded	
		Adequacy of Management and Staffing Plan (30 points)
30		<ul style="list-style-type: none"> • Overall quality of Management Plan and organizational plan and the extent to which they reflect adequate time commitment to each task, correlate proposed assignments with past experience, and ensure the efficient operation of the project (9 points) • Qualifications, Compensation Policy, and Workload Standards for Personnel (7 points) • Supervision and Evaluation of Hearing Officers and Mediators (7 points) • Training of Hearing Officers and Mediators (7 points)
		Technical Quality of Work Plan (40 points)
35		<p>Description of proposed tasks and activities to be undertaken in order to accomplish the purpose of the contract, including those for implementing recommendations made in the <i>Evaluation Study of Special Education Dispute Resolution Issues</i>, initiation and completion dates:</p> <ul style="list-style-type: none"> • Implementation of the Hearing Process (10 points) • Implementation of the Mediation Process (10 points) • Data Reporting (5 points) • Protocols and Manuals (5 points) • Advisory Committee (2 points) • Transition Period (3 points)
5		Extent of capacity to modify systems, given any law or regulation changes
		Previous Work in Related Areas of Negotiation Settlement, Mediation, and/or Administrative Hearings (20 points)
10		Experience and expertise of proposed staff in the design and conduct of similar projects
10		Extent to which experience demonstrates an understanding of state and federal special education laws affecting mediation and due process hearings
Total		

STEP 2, PART 1 – PUBLIC OPENING OF THE COST PROPOSAL

Proposals advance to this step if they scored 90 points (90%) and above on the Technical Proposal. A CDE representative will open the sealed Cost Proposal publicly as specified in Section VIII. Evaluation Process.

yes	no	The Cost Proposal contains a detailed line item budget for completion of the work outlined in the Technical Proposal.
yes	no	The Cost Proposal is broken down by budget line items and by major tasks.
yes	no	The Cost Proposal provides a clear computation and explanation of all rates, including indirect cost detail.
yes	no	All staffing titles used in the Cost Proposal correspond to the staffing titles used in the Technical Proposal.
yes	no	The Cost Proposal includes the following items: 1. Labor cost detail, including hourly or billing rates for all personnel and the total number of hours projected for this project
yes	no	2. Operating expense detail
yes	no	3. All subcontractor expenses are displayed in the same manner.
yes	no	All costs are broken down into each of the four different time periods specified in Section V. Proposal Specifications, D. Cost Proposal.
yes	no	The bidder has included the estimated salaries to be paid to personnel in future years based on placement on salary schedules, and the salary schedules are included as a part of the Cost Proposal.